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Author

Corporate Author United States District Court, Eastern District of New Yor

Report/Article Title Amended Complaint, Maureen Ryan, Individually, and as the mother of the infants Kerry Ryan and Michael Ryan, and Michael Ryan, and others similarly situated, Plaintiffs, against the Public Health Service, The Food and Drug Administration, The Veterans Administration, Defendants, In re: "Agent Orange" Product Liability Litigation, Multi District Litigation (MDL) No. 381

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Descripton Notes Also included is a cover letter from Marianne T. Anderson to Alvin L. Young, May 23, 1984.

CARR, GOODSON & LEE, P. C.

1919 PENNSYLVANIA AVENUE, NW
WASHINGTON, DC 20006
(202) 463-6063

LAWRENCE E. CARR, JR. * +
WILLIAM J. CARTER * + ▽
L. PALMER FORET * +
ROBERT W. GOODSON * +
JAMES F. LEE, JR. * + □
MARGARET H. WARNER *

KENNETH W. FARBER *

* DC + MD ▽ VA □ NY

MARYLAND OFFICE
31 WOOD LANE
ROCKVILLE, MARYLAND 20850
(301) 424-7024

VIRGINIA OFFICE
4010 UNIVERSITY DRIVE
FAIRFAX, VIRGINIA 22030
(703) 691-8818

OF COUNSEL
WILLIAM O. SNEAD, III * ▽

May 23, 1984

Dr. Alvin Young
Office of Science & Technology Policy
White House

Dear Al:

Just a note to accompany a copy of the complaint filed by Victor Yannacone representing Maureen Ryan, Carrie Ryan, et al. against FDA, VA, and PHS.

It appears that Agent Orange has not been resolved as yet. Because of your sustaining interest in the project, I thought you might want to keep apprised of relevant matters. Thus, the complaint is enclosed.

If you ever meander down Pennsylvania Avenue, please stop in to see us.

Sincerely,

Marianne

Marianne T. Anderson
Legal Assistant

Encl.

Young

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------x

In re

"AGENT ORANGE"

Product Liability Litigation

----------x

Amended Complaint

MAUREEN RYAN, Individually, and as the mother of the infants KERRY RYAN and MICHAEL RYAN, and MICHAEL RYAN, and others similarly situated,

Note: Change

Plaintiffs,

-against-

THE PUBLIC HEALTH SERVICE,
THE FOOD AND DRUG ADMINISTRATION,
THE VETERANS ADMINISTRATION,

Defendants,
----------x

WEINSTEIN, CH.J.

CV-84-2237

Multi District Litigation (MDL) No. 381

(All cases)

This Master Document submitted by

YANNACONE & YANNACONE and PEGALIS & WACHSMAN, P.C.,
Post Office Drawer #869, Patchogue, New York 11772
(516) 654-2299/487-1990

...STEIN, CH. J.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------x

In re

CV-84-2237

"AGENT ORANGE"

Product Liability Litigation

----------x

MAUREEN RYAN, Individually, and as the mother of the infants KERRY RYAN and MICHAEL RYAN, and MICHAEL RYAN,

Plaintiffs,

-against-

THE PUBLIC HEALTH SERVICE,
THE FOOD AND DRUG ADMINISTRATION,
THE VETERANS ADMINISTRATION,

Defendants,

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VERIFIED COMPLAINT

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VERIFIED COMPLAINT

PLAINTIFFS DEMAND TRIAL BY JURY

Plaintiffs allege the following by their attorneys YANNACONE & YANNACONE and PEGALIS & WACHSMAN, P.C.

Venue

1. The venue of this action has been determined under the Rules of Procedure of the Judicial Panel on Multi-district Litigation.

General Jurisdiction

2. This action arises under Article VI, section 2, of the Constitution of the United States,

> "This Constitution, and the Laws of the United States shall be made in Pursuance thereof; and all Treaties made, of which shall be made, under the Authority of the United States, shall be the Supreme Law of the Land; and the Judges in every state shall be bound thereby; and Thing in the Constitution of Laws of any State to the Contrary notwithstanding."

and involves the declaration and interpretation of the rights retained by the plaintiffs as citizens under the Ninth Amendment of the Constitution of the United States.

> "The enumeration in the Constitution of certain rights, shall not be contrued to deny or disparage others retained by the people."

and under the "due process" clause of the Fifth Amendment to the Constitution of the United States, to the extent that the malfeasance, misfeasance, nonfeasance, and intentional

neglect by individual bureaucrats of the defendant federal agencies may deny the individual named plaintiffs and all others so unfortunate as to be similarly situated, a right of action against the defendants herein for the wrongdoing hereinafter complained of; and under the Eighth Amendmant to the Constitution insofar as plaintiffs' physical and economical afflictions make them de facto prisoners of the Veterans Administration System and the wanton and reckless disregard of the Veterans Administration constitutes cruel and unusual punishment.

3. Jurisdiction of this Court is invoke under Title 28 United States Code, Section 1331(a), and where there is an amount in controversy as to any individual member of the class herein, it far exceeds the sum or value of $10,000 exclusive of interest and costs.

4. Jurisdiction of this Court is also invoked under Title 28 United States Code, Section 1346(b), as claims are made hereinunder 28 United States Code, Sections 2671, et seq., and involve personal injuries, loss of property, or death caused by negligent or wrongful acts or omissions of employees of the defendant federal agencies acting within the scope of their office or employment, under circumstances where a private person would be liable in accordance with the laws of the places where the acts or omissions occurred.

5. Upon information and belief, individual bureaucrats as employees of the defendant federal agencies have violated the constitutional rights of the plaintiffs and ignored the well demonstrated concern of the Congress and People of the United States to provide "general protection" for members of the uniformed services and veterans, as embodied in various federal and state statutes and regulations enacted since the formation of the Continental Army in 1776.

6. Jurisdiction is also predicated under Title 28 United States Code, Section 1361 since mandamus is sought against the appropriate individuals who are responsible for determining policy at the defendant federal agencies.

Equitable Jurisdiction

7. This action is brought in equity before this court on certain grounds, stated hereafter, under Title 28 United States Code, Sections 2201 and 2202.

8. The subject matter of this action is essentially equitable in nature since the action is brought for the purpose of restraining the defendants from doing serious, permanent and irreparable injury which cannot be adequately compensated by merely awarding money damages to the class of Plaintiffs, and for mandamus compelling the individuals who are responsible for determining policy at the federal agencies to perform their duties as mandated by Congress.

9. The declaratory judgment and injunctive relief demanded on behalf of the class are equitable remedies and the substantive character of the rights sought to be enforced by the Plaintiffs are historically those resolved in a court of equity.

10. The law does not afford any adequate remedy for the wrongs of the individual defendant bureacrats.

11. There is no plain, adequate, and complete remedy at law as practical and efficient as the equitable relief sought herein.

Class Action Allegations

Plaintiffs assert this action is maintainable as a "class action" under the provisions of Rule 23 (b)(1)(a), Rule 23 (b)(1)(b), Rule 23 (b)(2) and Rule 23 (b)(3) of the federal Rules of Civil Procedure.

12. Upon information and belief, during the period from 1962 through 1971, approximately 2.4 million American Servicemen were exposed to contaminated herbicides manufactured, marketed, and distributted for use in Southeast Asia by certain cehmical companies including, THE DOW CHEMICAL COMPANY, MONSANTO CO., HERCULES INCORPORATED, THOMPSON-HAYWARD CHEMICAL COMPANY, DIAMOND SHAMROCK CORPORATION, UNIROYAL, INC., THOMPSON CHEMICALS CORPORATION, formerly a division of WM. T.

THOMPSON CO., HOFFMAN-TAFF, a division of SYNTEX CORP., and HOOKER CHEMICAL COMPANY, a subsidiary of OCCIDENTAL PETROLEUM CORPORATION, (all hereinafter throughout this complaint referred to collectively as "war contractors").

13. Upon information and belief, many servicemen and women now veterans, have manifested symptoms of exposure to toxic synthetic organical chemicals such as 2,3,7,8-tetrachloro dibenzo p-dioxin (TCDD or "Dioxin").

14. Upon information and belief, many servicemen, now veterans suffered traumatic injuries during military service and are therefore entitled to medical care and treatment by the Veterans Administration of the United States.

15. Upon information and belief, unless the equitable relief sought herein is granted by this court, it is reasonable to expect numerous addition claims will be made in the future by individuals so unfortunate as to be similarly afflicted, and it will be necessary for this Court to retain jurisdiction ove the class in order to assure equitable protection of the class.

16. The claims of the plaintiffs are representative of the claims of all the members of the class.

17. There are several definable groups of plaintiffs that may be identified within the entire class of plaintiffs any and each of which may be treated as a class under Rule 23.

18. It is possible to establish criteria for identification of each individual class member by reference to records maintained in the regular course of govenmental operations by various agencies of the United States of America, in particular, the Department of Defense, the Veterans Adminsitration, and the Department of Health, Education and Welfare.

19. Member of the class are fairly and adequately represented by counsel for the plaintiffs and neither the individual plaintiffs named at this time nor the attorneys for said plaintiffs so named have any interests adverse to those of any individual members of the class of all those who might be entitled to the relief sought herein.

20. There are substantial questions of law and fact common to the class.

21. The questions of law common to the class of all those who have already been affected, or who are now or will be so effected, include, but are not limited to:

(a) the joint and several liability of the defendant federal agencies;

(b) the nature and extent of the legal and fiduciary obligations and duties that the defendant federal agencies, by reason of their political power and administrative resources, owe the plaintiffs;

(c) the remedy to be fashioned by the Court to redress the wrongs committed by the defendant federal agencies upon the plaintiffs, and all others similarly afflicted; and

(d) the appropriate measure of damages.

22. Some of the questions of fact common to the class of all those who have already been affected, or who are now, or will be so affected, include, but are not limited to:

(a) the extent of the toxicity attributable to the phenoxy herbicides that were contaminated with polychlorinate dibenzo-p-dioxins (PCDDs) and deployed as chemical defoliants in Viet Nam;

(b) the characteristics of such toxic effects manifested in human beings;

(c) the permanence of such toxic effects;

(d) the extension of toxic effects through genetic and somatic damage to succeeding generations; and

(e) what knowledge each defendant federal agency had, or with the exercise of reasonable care and concern for the health, safety, and welfare of the plaintiff veterans and their families should have had, concerning such toxic effects.

(f) whether the mistreatment, medical malpractice and hospital neglect rampant throughout the Veterans Administration health care system is so widespread as to constitute a government "policy".

The Basis of Plaintiffs' Claims

23. Upon information and belief, based on certain statements of fact alleged to be true by the defendant war contractors in their Third Party Complaints against certain departments or agencies of the United States of America (hereinafter referred to as "U.S." or "United States") and certain officials, employees, and agents of such departments of agencies, (MDL 381 Docket Documents bearing Documents Numbers 108, 109, 110, 111, and 112) subsequent to the time that each of the veterans were discharged from the Armed Forces of the United States, the defendant federal agencies failed to warn the plaintiff of the risks of devastating injury resulting from exposure to toxic synthetic organic chemicals such as 2, 3, 7, 8-tetrachloro dibenzo p-dioxin

(TCDD or "Dioxin") and the defendant federal agencies failed to provide time and accurate information regarding the nature of such hazards to the plaintiff veterans and their families.

24. Upon information and belief, based on certain statements of fact alleged to be true by the war contractors in said Third Party Complaints against the United States, the Veterans Administration and other agencies of the U.S. Government failed to provide adequate medical care and treatment, including genetic counseling to the plaintiff veterans and their families, subjecting said plaintiff veterans and their families to unreasonable risk of suffering personal injuries and sustaining serious and permanent damages.

25. According to said Third Party Claims of the war contractors, the damages sustained by the plaintiff veterans and their families were "caused, in whole or in part, by the negligent ... wanton and reckless conduct" of the Veterans Administration and other agencies of the United States.

26. That upon information and belief, that since 1973, the defendant federal agencies knew, or, with the exercise of reasonable care and concern for the health, safety, and welfare of the plaintiff veterans and their families should have known, the following facts concerning phenoxy herbicides and their use by the United Stated during combat in Vietnam and Southeast Asia.

(a) The chlorinated phenoxy herbicides, such as 2,4,5-trichlorophenoxy acetic acid (2,4,5-T) and 2,4-dichloro phenoxyacetic acid (2,4-D), are growth regulators with hormone-like activity.

(b) They were manufactured, advertised, marketed, and sold since the mid-1940s, shortly after the end of World War II.

(c) In the course of synthesizing 2,4,5-T, several chlorinated dioxins, including 2,3,7,8-tetrachloro dibenzo p-dioxin (TCDD or "Dioxin"), are formed as intermediates or by-products of the reaction, and unless destroyed or otherwise removed can, have, and do, contaminate such commercial phenoxy herbicides as 2,4,5-T and 2,4,5-TP ("silvex").

(d) In 1970, the Surgeon General of the United States reproted that the use of 2,4,5-T

might be hazardous to human health, and the United States Secretary of Health, Education, and Welfare and the United States Secretary of Agriculture issued a joint order calling for an immediate cessation of all uses of 2,4,5-T on or around lakes, ponds, and ditch banks and of all uses of liquid formulations around around homes and recreation areas. Another order issued by these two departments cancelled all uses of granular formulation of 2,4,5-T on crops intended for human consumption.

(e) Use of 2,4,5-T was banned in Italy in 1970, and its use was also banned in the Netherlands and Sweden.

(f) The effort to suspend registration of 2,4,5,-T in 1970 resulted from published studies indicating that 2,4,5-T was a teratogen (i.e., caused birth defects), Subsequent studies, however, indicated that the teratogenic effects charged to the phenoxy herbicide 2,4,5-T were largely attributable to the contaminant TCDD.

(g) In 1971, a report of a Scientific Advisory Committee recommended restroation of registration of 2,4,5-T to the status existing prior to April 1970, with the following conditions: (1) a 0.1

mg/kg (0.1 parts per million (ppm)) tolerance of 2,4,5-T on edible food crops; (2) a limit of 0.5 mg/kg (0.5 ppm) TCDD contamination in 2,4,5-T produced in the future, equivalent to a 0.05 parts per trillion (ppt) TCDD residue on edible food crops, with certified analyses being furnished by the manufacturers to the Environmental Protection Agency (EPA); and (3) provisions for warnings on labels of formulations used around the home. The report recommended additional research on possible soil accumulation and food chain magnification of TCDD and the establishment of monitoring programs for detection of adverse effects that might be associated with continued use of phenoxy herbicides such as 2,4,5-T.

(h) On or about 13 April 1972, a new order was issued by the EPA continuing the suspension of 2,4,5-T use around homes, recreational sites, and aquatic areas, and cancelling use of 2,4,5-T on crops used for human food.

(i) In June 1974, the EPA dropped proceedings to ban most uses of 2,4,5-T and cancelled the scheduled hearings; however, the United States Department of Agriculture decision made in 1970 to cancel use of 2,4,5-T in and around homes, gardens

and recreational areas was not affected by this action.

(j) Herbicides were introduced into the armed conflict in Viet Nam in 1962. An estimated 107 million pounds of herbicides, approximately 94% of which were phenoxy herbicides, including 2,4,5-T, contaminated with toxic synthetic organic chemicals such as TCDD, were aerially disseminated over approximately 6 million acres in South Viet Nam from January, 1962 through February, 1971.

(k) American servicemen were exposed to approximately 44 million pounds of 2,4,5-T, which cointained an estimated 368 pounds of the toxic contaminant TCDD.

(l) Approximately 96% of all the 2,4,5-T used in Viet Nam was contained in a formulation designated "Herbicide Orange"; the remaining 2,4,5-T was contained in formulations designated "Herbicide Green", "Herbicide Pink" and Herbicide Purple".

(m) 90% of all the "Herbicide Orange", contaminated with approximately 203 pounds of the toxic chemical TCDD, was used in defoliation operations on 2.9 million acres of inland forests and mangrove forests of South Viet Nam.

(n) The Department of Defense suspended the use of "Herbicide Orange" shortly after the civilian agencies of government announced the effort to suspect certain uses of the phenoxy herbicide 2,4,5-T.

(o) In 1971, the Department of Defense directed that the "Herbicide Orange" in South Viet Nam be returned to the United States and that the entire stock be disposed of in an environmentally safe and efficient manner.

27. That upon information and belief, on or about 9 January 1980, the defendant federal agencies knew, or with the exercise of reasonable care and concern for the health, safety, and welfare of the plaintiff veterans and their families, should have known the following facts concerning 2,3,7,8-tetrachloro dibenzo p-dioxin (TCDD or "Dioxin"):

(a) The polychlorinated dibenzo-p-dioxins (PCDDs) and the polychlorinated dibenzo furans (PCDFs) are two series of related chemical compounds that exhibit similar chemical and physical properties. The first chlorinated dioxin was prepared as early as 1872 by two German chemists, Merz and Weith. In 1957, Gilman and Dietrich reported that they had prepared halogenated dioxins in quantities of approximately 20 grams.

(b) TCDD is an unwanted and unnecessary contaminant in the industrial preparation of the herbicide 2,4,5-T.

(c) Human exposure to TCDD has occurred during the production of certain compounds such as the herbicide 2,4,5-T, the fungicide pentachlorophenol, and the germicide hexachlorophene. The dioxins occur as impurites and/or contaminants associated with these commercial products.

(d) TCDD is a relatively immobile molecule, not easily decomposed in soil or readily broken down by soil microorganisms. TCDD is capable of being taken up and retained by living organisms and can enter the human body from several contaminated sources, including water.

(e) TCDD is one of the most potent low molecular weight toxins known and has been extensively studied.

(f) TCDD is a "cellular poison".

(g) The pathologic effects produced by the toxic isomers of polychlorinated dibenzo-p-dioxins (PCDDs) and polychlorinated dibenzo furans (PCDFs) vary quantitatively and qualitatively among different species; however, within a single species the toxic effects of these compounds are similar, differing

only in the intesity of the toxic effect produced over the time of the study.

(h) Chloracne or acneform dermatitis characterized by comedones, keratic cysts, pustules, papules, and abscesses, is often associated with and characteristic of human exposure to PCDDs, including TCDD. Squamous metaplasia and keratinization of sebaceous glands and hair follicles have also been observed in the skin of a number of animal species following exposre to TCDD. Clinical symptoms of chloracne may appear weeks or months after exposure.

(i) In 1957, TCDD was identified as the agent responsible for causing occupational chloracne in employees factories producing chlorophenol. In 1971 polychlorinated dibenzo-p-dioxins (PCDDs) were implicated as the cause of chloracne in a plant producing 2,4-D and 2,4,5,-T.

(j) In 1958, a condition known as "toxic fat syndrome", characterized by hydropericardium, ascites, subcutaneous edema, liver necrosis and death was described in chickens following accidental administration of toxic fats in their feed. The toxic material was called

"chick edema factor" until it was finally identified by X-ray crystallography as a PCDD.

(k) TCDD is metabolically table in mammalian systems, and alters some cellular compenents (particularly endoplasmic reticulum), especially in liver and kidney cells. TCDD and other PCDDs as well as the PCDFs and related compounds such as the polychlorinated biphenyls (PCBs) are known to stimulate a number of enzyme systems, including those responsible for detoxifying foreign compounds metabolizing steroid hormones and other ingested or endogenous lipid-like hormones, and converting several organic compounds to forms that can be eliminated by the kidney. TCDD is known to stimulate the enzymes, delta aminolevulinic acid synthetase (ALAS) and aryl hydrocarbon hydroxylase (AHH). The ability of compounds to stimulate ALAS and AHH correlated closely with their lethal, teratrogenic and acnegenic potency. TCDD is more potent that the known carcinogen 3-methylcholanthrene in stimulating AHH activity in certain animals.

(l) The synergistic action of TCDD with polycyclic hydrocarbon such as 3-methycholanthrene (MC) has induced cancer in different animal strains in direct proportion to the degree of stimulation of the induced enzymes.

(m) Exposure to TCDD causes an increased incidence of neoplasms in certain animal species. Upon information and belief, the carcinogenic and tumorigenic effects of TCDD include:

neoplastic nodules of the liver, Cholangiocarcinomas, hepatocellular carcinoma;
carcinoma of the ear duct;
carcinoma of the kidney;
adenoma of the adrenal cortex;
metasticizing retroperitoneal histiocytomas;
hyperplasia of the epithelium of the lung; squamous cell carcinoma of the lung;
squamous cell carcinoma of the hard palate/nasal turbinates;
squamous cell carcinoma of the tongue;
altered lymphopoiesis;
epithelial chagnes including hypertrophy, hyperplasia and metaplasia.

(n) Among the other toxic effects of TCDD on a number of different animal species are:

alopecia;
hepatic cell necrosis, cirrhosis; hepatic porphyrin accumulation;
hypoplasia of lymphoid tissues (with particular involvement of the cortical cells of the thymus resulting in suppression of cell-mediated immunity and reduction of host defenses);

hyperplasia of the lymph tissue and bone marrow;
hematological changes including lymphopenia, hypoproteinemia, and increased susceptibility to infection concomitant with the supression of cell-mediated immunity;
intestinal hemorrhage;
adrenal hemorrhage;
hypoplasia of bone marrow and lymph nodes;
cellular effects including hypertrophy, hyperplasia and metaplasia in the bronchial tree, bile ducts, pancreatic ducts, salivary-gland ducts and palpebral conjunctivae; gastric hyperplasia and ulceration, hypertrophic gastritis; renal pelvis hyperplasia; ureter and urinary bladder hyperplasia;
general debilitation and wasting is associated with exposure to lethal dose of polychlorinated dibenzo-p-dioxins (PCDDS) or polychlorinated dibenzo furans (PCDFS) in a number of animal species which exhibit a chronic and progressive weight loss, parallel mobilization of peripheral fat, increased serum triglyceride levels, and development of fatty liver;
Testicular atrophy, necrosis and abnormal spermatocyte development.

(o) The embryotoxic, fetotoxic and teratogenic effects of TCDD in certain animal species include:

cleft palate;
hemorrhage;
edema;
fetal kidney abnormalities which may progress into hydronephrosis during the postnatal period;
hydrocephalus;
lack of eyelid formation (open eye);
clubfoot;
increased perinatal mortality;
interference with lymphatic system development;
skeletal abnormalities;
increased fetal enzyme activity.

(p) The mutagenic and cytogenic effects of TCDD include:

increased incidence of reverse mutations in Excherichia coli and Salmonella typhimurium;
increased reversion frequency to streptomycin indepdence in Escherichia coli sd-4;
induction of frameshift mutations in Salmonella typhimurium, strain TA1532, but not base substitutions in strain TA1530;
inhibition of mitosis and chromosomal abnormalities (dicentric bridges and chromatin fusion with formation of multinuclei or a single large nucleus) were observed in a endosperm cells of the African blood lily (Haemanthus Katherinae Baker).

(q) TCDD may form a physical complex with DNA in cell nuclei.

(r) An outbreak of chloracne affected workers at the 2,4,5,-T factory of the Dow Chemical Company in Midland, Michigan in 1964.

(s) During 1964, certain employees working in a 2,4-D and 2,4,5,-T producing factory of Diamond Alkali Co., a division or subsidiary of Diamond Shamrock Corporation, at Newark, New Jersey, manifested features of chloracne, increased excretion of uroporphyrins, and elevated serum enzyme levels, hirsutism, hyperpigmentation, increased skin fragility and vesicobullous eruptions on exposed areas of skin.

Five years later, in 1969, after the level of TCDD contamination in the 2,4,5,-T had been

reduced, re-examination of the employees of the same factory still revealed evidence of chloracne, hyperpigmentation, facial hypertrichosis, gastrointestinal symptoms (including nausea, vomiting, diarrhea, abdominal pains, blood in the stools), lower extremity weakness, headache and/or decreased auditory acuity, elevated serum cholesterol, elevated serum enzymes, and diminished white blood cell counts. The severity of chloracne was associated with the degree of hypomania as measured on the Minnesota Multiphasic Personality Inventory hypomanic scale.

(t) In 1976, in Seveso, Italy, a chemical reactor involved in the industrial preparation of 2,4,5-T exploded, sending a plume of chemicals, including TCDD, 30 to 50 meters above the factory. The vapor cooled and came down over an area about 2 kilometers long and 700 meters wide. According to the calculations of Givaudan, ICMESA, a Swiss company which owned the plant, between 650 GRAMS and 1700 GRAMS of TCDD were released. For the year prior to the Sevesco accident, only four (4) cases of congenital malformations were recorded for 3,902 births, for a rate of malformations of 0.12% of live births in the region contaminated with

said toxic synthetic organic chemicals. Upon information and belief, those four (4) cases of congenital malformations included two (2) cases of Down's Syndrome (mongolism) and two (2) cases of hypospadias. For the year after the release of TCDD, 38 malformations of 1.36% of live births occurred in the region. Upon information and belief, those 38 malformations included two (2) cases of Down's Syndrome and two (2) cases of hypospadias, together with 34 polymorphic malformations including meningocele (a congenital hernia in which the meninges, the membranes covering the brain and spinal cord, protrude through an opening of the skull or spinal column); pulmonary aplasia (failure of the lungs to properly develop); atresia of the ear (pathologic closing or congenital absence of the ear opening); cardiopathies; ectopic bladder; coelosomy; abdominal malformations; and anomalies of the skeletal members.

28. Upon information and belief, the defendant federal agencies have conspired to ignore, have continued to ignore, and unless restrained by this Court, will continue to ignore 38 U.S.C. Sections 5001, 610 et.seq. and 38 C.F.R. Sections 3.102, 3.303 et.seq.-which entitle veterans of the Vietnam War to "timely and complete care"

for any disability which can be considered "within the range of probability" to be service related and that this indifference to the intent behind, the plain language of, Congressional statutes and the Veteran's Administration's own regulations constitutes a violation of plaintiff's rights assured under the Constitution of the United States.

29. Upon information and belief, the defendant federal agencies have conspired to withhold from public knowledge information about the deleterious effects of toxic synthetic organic chemicals such as TCDD or "Dioxin" to which combat veterans of the armed forces of the United States, Australia and New Zealand were exposed during their military service in Viet Nam and Southeast Asia. In particular, that the Public Health Service of the United Stated conspired with DIAMOND ALKALI COMPANY and/or successor in interest DIAMOND SHAMROCK CORPORATION, to withhold from the Department of Defense and the armed forces of the United States responsible for the decision to deploy phenoxy herbicides as chemical defoliants in Viet Nam, the full extent of the toxic effects upon workers and community residents associated with the Dioxin contamination of phenoxy herbicides produced at the DIAMOND ALKALI Plant in Newark, New Jersey; and that, the Food and Drug Administration conspired with a number of war contractors to withhold information about the

toxic effects of Dioxin contaminated products since sometime in the early 1960s.

30. That the defendant federal agencies have conspired to deprive the plaintiff veterans of the proper medical examinations and treatment and/or the medical evidence necessary to enable them to evaluate the risk of neoplastic disease, genetic damage, and other deleterious effects of their exposure to toxic chemicals such as TCDD.

31. That the defendant federal agencies have conspired to pursue a course of conduct of misleading the plaintiff veterans, their families, and all the others so unfortunate as to be similarly situated and afflicted, by misrepresenting the extent of the risk of neoplastic disease, genetic damage, and other deleterious effects of their exposure to toxic synthetic organic chemicals such as TCDD.

32. That the defendant federal agencies have conspired to disseminate false and misleading information to the plaintiff veterans and their families and to most of the more than two million Viet Nam combat veterans. Such misleading information is calculated to persuade the veterans and their families not to assert their rights or pursue their legal remedies against the war contractors in the first

instance, and in the case of medical malpractice, hospital negligence, and other wrongs the defendant federal agencies against the United States. Specifically, individual bureaucrats employed by the defendant federal agencies by abuse of their positions of authority within federal bureaucracy have actively discouraged the plaintiff veterans and their families from:

(a) Filing claims for the veterans benefits mandated under the several provision of Title 38, United States Code, where such claims are based on exposure to toxic synthetic organic chemicals such as TCDD during military service in Vietnam and Southeast Asia;

(b) Filing claims under Federal Tort Claims Act (FTCA) of 1946 (28 U.S.C. 2671, et.seq.) for actionable torts committed since the plaintiff veterans completed their military service, by the individual defendant bureaucrats and, upon information and belief, certain of their predecessors and successors in interest, in particular the breach of certain duties owed to the plaintiff veterans and their families. Specifically, these duties include:

(1) The duty to provide information to, and warn, the plaintiff veterans and their families of the risks associated with exposure to toxic synthetic organic chemicals such as TCDD.

(2) The duty to provide medical information, advice, care and treatment, including but not limited to genetic counseling to the plaintiff veterans and their families;

(c) Filing suit for compensatory, general, and punitive damages against the individual defendant bureaucrats responsible for the violation of the constitutional rights of the plaintiff veterans and their families; and filing suit against the individual agents, employees and officials of the Veterans Administration responsible for the comission of malpractice on the individual plaintiff veterans and their families.

33. That the defendant federal agencies knew or should have known that their reprehensible neglect of the health, safety and welfare of the plaintiff Vietnam combat veterans and their families violated the spirit and intent of the Congressional mandate of Title 38 of the United States Code of related legislation, and evidenced intent on the part of the individual defendant bureaucrats to deprive the plaintiff veterans, their families, and all those so unfortunate as to be similarly situated of their constitutional rights.

34. That the defendant, VETERANS ADMINISTRATION has conspired to overmedicate Vietnam combat veterans with psychotropic drugs; ignore symptoms of serious, permanent and irreparable damage to the brain, central and peripheral nervous system; ignore clearly discernible symptoms of burgeoning neoplastic disease; and actively neglect the evidence of significant genetic damage among those Viet Nam combat veterans who have not otherwise been rendered sterile.

35. That by reason of the conduct of the defendant federal agencies, the plaintiffs have suffered serious, permanent and irreparable damage, and, unless this Court grants the equitable relief sought by said plaintiffs will suffer further serious, permanent, and irreparable damage including, but not limited to, brain injury and death of the plaintiff veterans as a result of the misrepresentation of, and overmedication with, psychotropic drugs.

36. Upon information and belief, treatment received by significant numbers of plaintiff veterans incarcerated in Veterans Administration Hospitals or compelled to avail themselves of Veterans Administration outpatient services is grossly negligent, less than competent, deliberately indifferent, or nonexistent, as a result of both of policy decisions by Veterans Administration officials and the

actions of subordinates encouraged by the official policy of deliberate indifference. Such systemic and institutionalized malpractice has resulted in a de facto deprivation of the vested right of the plaintiff veterans to "timely and complete care".

37. Under 38 U.S.C., Section 5001 and 38 U.S.C., Sections 610, et seq., the plaintiff veterans of the Viet Nam War are entitled to have "timely and complete care" provided by Veterans Administration hospitals for their service-related injuries.

38. Upon information and belief, arbitrary, capricious and inconsistent decisions of Veterans Administration personnel as to what constitutes a service-related injury have resulted in de facto deprivation of the vested right of the veterans to timely and complete medical care.

39. That the defendants have denied the plaintiff veterans access to a simple, certain and uniform system of medical care in violation of their rights.

40. Upon information and belief, medical treatment in Veterans Administration Hospitals is neither certain nor uniform, with an arbitrary and capricious standard under which veterans with identical injuries are afforded treatment in some cases and denied treatment in others on the grounds

that the injuries are or are note service-related, depending upon the bureaucratic whim of Veterans Administration personnel in various hospitals throughout the country.

41. Upon information and belief, systemwide and institutionalized medical malpractice by the Veterans Administration has resulted in de facto deprivation of the vested rights of the plaintiff veternas and their families.

42. That the Administrator of the Veterans Administration has abused his discretion.

43. Upon information and belief, certain veterans are so physically, emotionally and economically helpless as to be de facto prisoners of the Veterans Administration Hospital System in that:

> (a) the nature of their mental or physical injuries and/or their treatment renders them incapable of removing themselves from Veterans Administration Hospital facilities.
>
> (b) because of the disability resulting from their injuries they are financially unable to avail themselves of other health care and in order to survive must remain "chained" to the Veterans Administration Hospital system.

44. That the Eighth Amendment rights of these de facto prisoners are violated by the wanton callousness displayed by the Veterans Administration policies and personnel.

45. That upon information and belief, veterans claiming symptoms attributable to service in Viet Nam and Southeast Asia are given cursory physical examinations, minimal blood work and urinalysis, and asked to complete a prefabricated history dealing with "exposure" to herbicides in Viet Nam.

46. Upon information and belief, significant numbers of Veterans Administration personnel are negligently prescribing psychotropic drugs without justification and without adequate monitoring of the effects of the administration of such drugs.

47. Upon information and belief, Veterans Administration personnel are prescribing psychotropic drugs to Vietnam combat veterans in the absence of complete psychiatric and psychological evaluation by licensed psychiatrists and psychologists.

48. Upon information and belief, the veterans medicated with these psychotropic drugs are not fully informed of the effects of such drugs, or informed of the availability of alternate forms of treatment.

49. Upon information and belief, Veterans Administration personnel are performing "operant conditioning" therapy on Vietnam combat veterans without first obtaining

informed consent based on a complete disclosure of the nature of the treatment and its effects and the alternative therapeutic modalities available.

50. Upon information and belief, Veterans Administration personnel are conducting various forms of medical experimentation upon Vietnam combat veterans without obtaining informed consent based upon a full and complete disclosure of the nature of the experiment, its purpose and its effect upon the veteran.

DEMAND FOR JUDGMENT AND PRAYER FOR RELIEF:

WHEREFORE, the plaintiff veterans and their families, individually and on behalf of all those so unfortunate as to be similarly situated, seek judgment:

> APPOINTING and designating, subject to the continuing jurisdiction and direction of this Court, an appropriate legal representative of the plaintiffs for the purpose of representing said plaintiffs as a class in claims and proceedings involving the Veterans Administration and other federal agencies.

DECLARING that the very essence of civil liberty consists in the right of every individual Viet Nam combat veteran to claim the protection of the laws, whenever he receives an injury.

DECLARING that the right of every individual Vietnam combat veteran to a remedy for the violation of a vested legal right, is a civil liberty and vested right retained by those veterans as citizens of the United States under the United States Constitution.

DECLARING that any attempt by the defendant federal agencies to deprive Viet Nam combat veterans of their right to compel the federal government to provide the services to which they are entitled violates the rights of the plaintiff veterans assured by the Fifth and Ninth Amendments to the United States Constitution.

DECLARING that the tortious conduct of the defendant federal agencies violates the civil and human rights of the plaintiffs.

DECLARING that the tortious conduct of the defendant federal agencies violates the rights

of the plaintiffs under the Fifth, Eighth and Ninth Amendments to the United States Constitution.

DECLARING that the continued prescription of psychotropic drugs to the plaintiff veterans without justification and without adequate monitoring of the effects of the administration of such drugs is so wantonly callous as to violate the fundamental human and civil rights of the plaintiff veterans and constitute a form of "cruel and unusual punishment" prohibited by the Eighth Amendment of the United States Constitution.

DECLARING that the defendant federal agencies by reason of their political stature and administrative resources, are Trustees of the health, safety, and welfare of the plaintiff veterans and their families to the extent that such individual defendant bureaucrats, actually had, or now have, or with the exercise of reasonable concern for the health, safety and welfare of the plaintiff veterans and their families, should have had, or now should have, knowledge of the dangerous properties and toxic characteristics of certain synthetic organic chemicals such as 2,3,7,8-tetrachloro dibenzo p-dioxin (TCDD or "Dioxin") to which the plaintiff

veterans were exposed during their service in the Armed Forces of the United States, Australia and New Zealand.

DECLARING that continued refusal to warn the plaintiff veterans and their families of the risks associated with exposure to toxic synthetic organic chemicals such as TCDD or "Dioxin" is a breach of the fiduciary duty and obligation owed those veterans and their families by the defendant federal agencies.

DECLARING that the misrepresentations of fact and law, and the tortious conduct of the defendant federal agencies estop said defendant federal agencies or any other agency of government from asserting any statute or limitations as a bar to the claim of the plaintiff veterans and their families and all others so unfortunate as to the similarly situated for benefits available under Title 38, of the United States Code and associated federal legislation, including but not limited to the Federal Tort Claims Act of 1946, 80 Stat. 306, 28 U.S.C. 2671, et seq.

DECLARING that this complaint constitutes sufficient notice of claim to the defendant federal

agencies under the Federal Tort Claims Act of 1946, 80 Stat. 306, 28 U.S.C. 2671, et seq. on behalf of each member of the class of plaintiffs sought to be represented until such time as this Court shall direct the particular filing of individual claims.

DIRECTING the defendant federal agencies in particulars at the Hospitals maintained by or under the supervision of the Veterans Administration of the United States to take a full and complete history adequate to form the data base for epidemiological analysis from each veteran claiming afflictions invovling exposure to TCDD.

DIRECTING the Veterans Administration to provide a simple, certain and uniform system to timely and complete medical care as mandated by Title 38 United States Code, Section 5001.

DIRECTING the Veterans Administration of the United States, the Department of Defense, or such other responsible Federal Officials as this Court may direct, to

(a) NOTIFY all Viet Nam combat veterans and their children, that they are at risk of genetic and somatic damage, including neoplastic disease, and that there is an increased probability of birth defects among their children;

(b) NOTIFY each Viet Nam combat veteran of their right to receive medical care, treatment and assistance as a result of exposure to toxic synthetic organic chemicals while serving in Vietnam and the Southeast Asia Theater of Operations; and

(c) NOTIFY each Viet Nam combat veteran, or the widow, children and parents of each Vietnam combat veteran who has died since returning to the United States from Southeast Asia of the existence of this action and of the chemical company war contractors' allegation that a possible claim exists against the government;

(d) NOTIFY each Viet Nam combat veteran, or the widow, children, and parents of each Vietnam combat veteran who has died since returning to the United States from Southeast Asia, of their right to file claims for damage, injury or death against certain federal officials and federal agencies under the Federal Tort Claims Act of 1946, 80 Stat. 306, 28 U.S.C. 2671, et seq.; 28 U.S.C. 2401(b), and other statutes by reason of the failure of those federal officials and federal agencies to warn them of the risk associated with their exposure to toxic synthetic organic chemicals while serving in Vietnam and the Southewast Asia Theater of Operations;

(e) PROVIDE each Viet Nam combat veteran, and the widow, children, and parents of each Vietnam combat veteran who has died since returning to the United States from Southeast Asia, with sufficient detailed instructions for filing of such claims as will enable each such potential claimant to make timely claim against the government.

IMPOSING upon the defendant federal agencies, as Trustees of the health, safety and welfare of

the plaintiff veterans and their families, a non-delegable duty to disclose to the veterans and their families whatever information they now have, or with the exercise of reasonable concern for the health, safety and welfare of the plaintiff veterans and their families should have, concerning the dangerous properties and toxic characteristics of the synthetic organic chemicals to which the plaintiff veterans were exposed during their service in the Armed Forces of the United States.

PROHIBITING the defendant federal agencies particularly the staff members at the Hospitals maintained by or under the supervision of the Veterans Administration of the United States from continuing to prescribe psychotropic drugs to Viet Nam combat veterans in the absence of a complete physiological, psychiatric, and psychological evaluation by physicians, psychiatrists, and psychologists all of whom are duly licensed to practice such professions in the State in which they hospital facility is located.

PROHIBITING the defendant federal agencies particularly the staff members at the Hospitals maintained by or under the supervision of the

Veterans Administration of the United States from continuing to prescribe psychotropic drugs to Viet Nam combat veterans unless and until the veterans have been fully informed of the effects of such drugs, and the opportunity for alternative forms of treatment have been presented to the veteran and his family.

PROHIBITING the defendant federal agencies particularly the staff members at the Hospitals maintained by or under the supervision of the Veterans Administration of the United States from continuing to prescribe psychotropic drugs to Viet Nam combat veterans unless and until adequate physiological and psychological monitoring of the level organic cehmicals such as TCDD during service in Viet Nam and Southeast Asia;

COMPELLING the Veterans Administration to conduct complete dermatological examinations; chemical analyses of blood, urine, and other physiological fluids; and such other tests as medical experts would find medically appropriate on those Vietnam combat veterans who present themselves to a Veterans Administration Hospital with symptoms of skin lesions since service in Southeast Asia, and/or

suggestions of a change in tolerance to alcohol, and/or motor or sensory impairment of central or peripheral nervous system, and/or significant change in bladder or bowel function since returning from Southeast Asia, and/or symptoms of accelerating degenerative processes ("early aging"), and/or complaints of infertility, and/or a history of birth defects among their children.

COMPELLING the defendant federal agencies to provide the appropriate representatives of the plaintiffs with a summary of all the diagnoses of neoplastic disease made and/or confirmed among Viet Nam combat veterans as well as veterans under the age of 40 years at the present time and who served in the United States Armed Forces from 1962 through 1972.

PROHIBITING the individual defendant bureaucrats, their successors in interest, and the staff members at the Hospitals maintained by or under the supervisions of the Veterans Administration of the United States from conducting any form of "operant conditioning" therapy on any Vietnam combat veteran without a full and complete disclosure of the nature of the treatment and its effects, and the offer of alternative therapeutic modalities.

PROHIBITING the defendant federal agencies particularly the staff members at the Hospitals maintained by or under the supervision of the Veterans Administration of the United States and their successors in interest from further disseminating misleading information to the plaintiff veterans and their families about their rights and the legal remedies available to such plaintiff veterans.

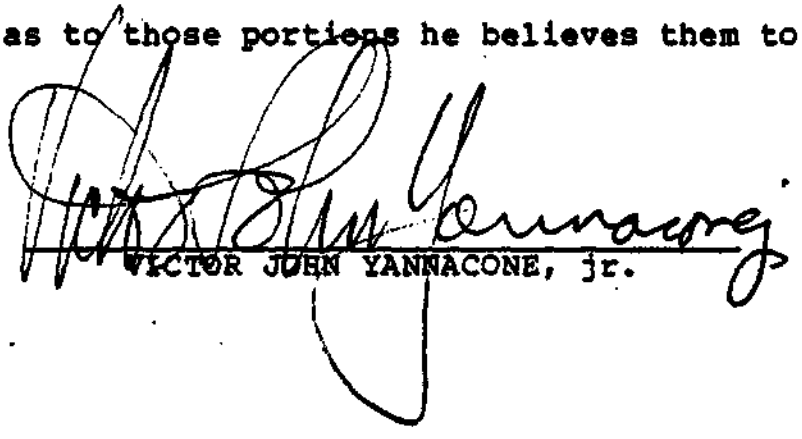
RESTRAINING the defendant federal agencies and the staff of the Veterans Administration and their successors in interest from any further distribution of a certain document entitled, "Worried About Agent Orange?", and from the use of the publication Vanguard or films or videotapes, prepared at public expense, as the means of further dissemination of misleading information about the risk of deleterious effects associated with exposure to toxic syntetic organic chemicals such as TCDD in Viet Nam and Southeast Asia.

ALL TOGETHER with such other and further relief as to this Court shall seem just and proper under the circumstances, including the costs, disbursements, and reasonable attorney's

ATTORNEY'S VERIFICATION

STATE OF NEW YORK)
)ss.:
COUNTY OF SUFFOLK)

VICTOR JOHN YANNACONE, jr., duly affirming under the penalties of perjury on this 17th day of May, 1984, states that he has prepared the foregoing Complaint on behalf of the plaintiff veterans and their families, and knows the contents thereof, that the same are true to his own knowledge except as to those portions therein stated to be alleged upon information and belief and as to those portions he believes them to be true.



VICTOR JOHN YANNACONE, jr.